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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

December 6, 2001

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**BY HAND DELIVERY**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: **Ex Parte -- Applications by BellSouth Corporation et al. for  
Authorization to Provide In-Region, InterLATA Services in Georgia  
and Louisiana, CC Docket No. 01-277**

Dear Ms. Salas:

The Competitive Telecommunications Association ("CompTel"), along with the following member companies, Birch Telecom, e.spire Communications, Inc., ITC^DeltaCom, Inc., and Z-Tel Technologies, Inc., through its attorneys, files this *ex parte* letter in support of the Motion to Strike of Covad Communications Company.

The Commission should strike the *ex parte* filing and supporting documentation that BellSouth Corporation ("BellSouth") filed with the Commission on November 30, 2001. The BellSouth *ex parte* filing contains substantial legal arguments and factual material relating to the adequacy of BellSouth's Operations Support Systems (OSS) in Florida, and therefore should have been included in BellSouth's initial 271 application. In accordance with prior Commission orders, each 271 application, as originally filed, must include "all of the information on which the applicant would have the Commission rely in making its findings." The Commission has firmly established that a BOC may not, "at any time during the pendency of its application,

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supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties commenting on its application.”<sup>1</sup>

BellSouth’s November 30, 2001, *ex parte* is a prohibited filing under the FCC’s well established policies, and, as such, should be stricken.<sup>2</sup> The BellSouth filing contains substantial legal arguments and factual data regarding changes to BellSouth’s OSS that were supposedly has made in response to KPMG’s findings in Florida. These legal arguments and new facts, submitted less than thirty days prior to the Commission’s statutory deadline for issuing an order in this proceeding, do not merely rebut “arguments or facts submitted by other commenters,”<sup>3</sup> but rather seek to introduce a significant amount of new evidence.

Although Covad raised certain problems with BellSouth’s OSS in its comments, the Commission has required BOCs to anticipate and address “in its initial application all facts that the BOC can reasonably anticipate will be at issue.”<sup>4</sup> Despite the fact that BellSouth was aware of these issues, it failed to resolve the OSS problems, or address them in its initial application. BellSouth also failed to address the Florida OSS test results in its reply comments. Instead, BellSouth waited until the last minute to address this important issue, leaving parties, including CompTel and its members, with insufficient time and opportunity to respond to the statements contained therein. Accordingly, the Commission must strike BellSouth’s November 30 *ex parte* as untimely.

CompTel supports Covad’s position that the Commission cannot rely on the assertions BellSouth makes in its *ex parte*, should it choose to accept the filing.<sup>5</sup> First, contrary to BellSouth’s position, the Florida OSS test remains largely incomplete. Numerous observations and exceptions remain open, thus illustrating BellSouth’s failure to comply with its OSS checklist obligations. Further, the experiences of CompTel’s members illustrate that the OSS test exceptions and observations are significant. For example, Covad explains that exception 6, which BellSouth characterizes as “small,” actually supports the Department of Justice’s conclusion that BellSouth’s EDI testing capabilities are insufficient, and thus, that

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<sup>1</sup> *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 34 (1999) (“*New York 271 Order*”), *aff’d*, *AT&T v. FCC*, 220 F.3d 607 (D.C. Cir. 2000) (citing *Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act, as amended, to Provide In-Region, InterLATA Service in Michigan*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20570-71 (1997)).

<sup>2</sup> See Covad Motion to Strike at 2-3.

<sup>3</sup> *New York 271 Order*, 15 FCC Rcd at 3968, ¶ 34.

<sup>4</sup> *Id.* at 3969, ¶ 36.

<sup>5</sup> See Covad Motion to Strike at 6-11.

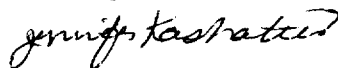
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CLECs have experienced significant difficulties implementing EDI. This is merely one of many open exceptions. Accordingly, the FCC cannot accept BellSouth's *ex parte*, but instead must evaluate the entire Florida OSS test results -- including those that still are pending -- it if chooses to accept BellSouth's *ex parte*.

For the reasons discussed above, the FCC should grant Covad's motion to strike. Please contact the undersigned if you have any questions regarding this filing.

Sincerely,



Robert J. Aamoth  
Andrew M. Klein  
Jennifer M. Kashatus